

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE: PHARMACEUTICAL INDUSTRY AVERAGE  
WHOLESALE PRICE LITIGATION

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MDL No. 1456

C.A. No. 01-12257-PBS

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THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

ALL ACTIONS

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**CERTAIN CONSUMER PLAINTIFFS'<sup>1</sup> MOTION TO WITHDRAW ALL  
PENDING MOTIONS, SUBMISSIONS AND OBJECTIONS  
CONCERNING THE PROPOSED TRACK 2 SETTLEMENT**

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<sup>1</sup> Certain Consumer Plaintiffs consist of the following individuals and/or their estates: Rev. David Aaronson, Katie Bean (for Harold Bean), Jimmy May Carter (for Harold Carter), Roger Clark, Rebecca Hopkins, Joyce Howe, Pat Drewett (for James Monk), Virginia Newell, Oral Roots, Mary Wright (for James Shepley), Beverly Thomson Shaw (for George Baker Thomson), Ethel Walters, and Larry Young.

In light of certain material, beneficial changes to the proposed consumer class settlement in Track 2, as well as a private settlement reached between Class Counsel and Certain Consumer Plaintiffs, undersigned counsel for Certain Consumer Plaintiffs hereby moves, pursuant to Rule 23(e)(5)<sup>2</sup>, to withdraw their pending motions, submissions and objections to the proposed Track 2 settlement, and in support thereof avers as follows:

On March 7, 2008, Class Counsel entered into a proposed settlement with the Track 2 Defendants providing for payment of \$125 million dollars to the consumer and TPP classes, and the ISHPs. 17.5% of the settlement fund (or \$21,875,000 million) was allocated to consumers. Certain Consumer Plaintiffs objected that, *inter alia*, the allocated consumer settlement share was too low, attorney fees were too high, and consumers should be paid more. In response to these objections, and after several rounds of mediation, Class Counsel have “rebalanced” the proposed settlement, raising the consumer allocation to 20%, an increase of \$3,125,000. Dkt. No. 7752 at 2. Class Counsel fees have been reduced to 28%, a reduction of over \$460,000. *Id.* The consumer estimated pro rata recovery for the vast majority of the Subject Drugs in Track 2 has been increased from 5.8281% to 14.9520 %, an increase of over 256.55% for consumers in Classes 1 and 3. *Compare* Dkt. No. 7648 at 4 *with* Dkt. No. 7752 at 4.

WHEREFORE, Certain Consumer Plaintiffs, by and through their undersigned counsel, hereby respectfully request that this Honorable Court grant their Motion to Withdraw All Pending Motions, Submissions, and Objections Concerning the Proposed Track 2 Settlement.

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<sup>2</sup> Federal Rule 23(e)(5) provides that any objection to a proposed class action settlement “may be withdrawn only with the court’s approval.”

Respectfully submitted,

Dated: August 25, 2011

/s/ Donald E. Haviland, Jr.

Donald E. Haviland, Jr., Esquire

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*Counsel for Certain Consumer Plaintiffs,  
Rev. David Aaronson, Katie Bean (for Harold  
Bean), Jimmy May Carter (for Harold Carter),  
Roger Clark, Rebecca Hopkins, Joyce Howe,  
Pat Drewett (for James Monk), Virginia  
Newell, Oral Roots, Mary Wright (for James  
Shepley), Beverly Thomson Shaw (for George  
Baker Thomson), Ethel Walters, and Larry  
Young.*

**CERTIFICATE OF SERVICE**

I, Donald E. Haviland, Jr., Esquire, hereby certify that on, August 25, 2011, I filed the Motion to Withdraw All Pending Motions, Submissions, and Objections Concerning the Proposed Track 2 Settlement with the Clerk of this Court and used the CM/ECF system to send notification of such filing to all registered person(s).

/s/ Donald E. Haviland, Jr.

Donald E. Haviland, Jr., Esquire

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